

## Article - Estates and Trusts

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§11–106.

(a) Unless otherwise expressly provided by a will or other controlling instrument, under which a gift is made to or for the benefit of the surviving spouse of a decedent which qualifies for an estate tax marital deduction under the tax law of the United States and the amount or size of the gift is defined by the terms of the will or other controlling instrument in terms of the maximum marital deduction allowable under the tax law, the definitions do not constitute a direction by the decedent to the fiduciary to exercise an election respecting the deduction of estate administration expenses or the determination of the estate tax valuation date, which the fiduciary may have under the tax law, only in a manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made.

(b) (1) In this subsection the following words have the meanings indicated.

(i) “Marital deduction formula clause” means any provision of a will or other controlling instrument that makes a bequest or transfer, the size or amount of which is determined in whole or in part with reference to the amount allowable to a decedent’s estate as a marital deduction under the tax law of the United States.

(ii) “Qualified terminable interest property” means property described in § 2056(b)(7) of the Internal Revenue Code.

(2) If a will or other controlling instrument executed on or before September 12, 1981 contains a marital deduction formula clause, an election by the personal representative or other authorized person to treat property not transferred pursuant to the clause as qualified terminable interest property for purposes of the estate tax marital deduction under the tax law of the United States shall neither increase nor decrease the amount or fraction of the estate, trust, or other fund transferred pursuant to the clause, unless a codicil to the will or amendment to another controlling instrument executed after September 12, 1981 shall expressly otherwise provide.

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